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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Part 95 of the Commission's)	WT Docket No. 98-169
Rules to Provide Regulatory Flexibility in the)	RM-8951
218-219 MHz Service)	
)	

ORIGINAL

To: The Commission

COMMENTS OF DISPATCH INTERACTIVE TELEVISION COMPANY

Dispatch Interactive Television, Inc. ("DITV"), a 218-219 MHz Service (the "Service") licensee in the Indianapolis, Indiana and Columbus, Ohio Metropolitan Statistical Areas, hereby submits its comments in response to the Notice of Proposed Rulemaking ("NPRM") issued in the above-referenced proceeding.¹ DITV applauds the Commission for its proposals to give licensees in this Service additional flexibility to provide new and innovative services in response to technological developments and marketplace demands. DITV wholeheartedly supports the Commission's conclusion that this flexibility will serve the public interest because it will ensure "that the 218-219 MHz Service provides the greatest benefit to the public." NPRM ¶ 58.

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¹ DITV is a wholly-owned subsidiary of the Dispatch Printing Company ("Dispatch"). Dispatch also owns, through subsidiaries, WTHR(TV), Channel 13, Indianapolis, Indiana and WBNS-TV, Channel 10, Columbus, Ohio.

Background. DITV has long been committed to developing the Service authorized in this band since it was first approved by the Commission in the early 1990s. DITV's predecessor corporate affiliates paid more than \$3 million for their licenses in Columbus and Indianapolis (hereinafter the "Stations") following the Commission's IVDS auction in 1994, the full amount that was due pursuant to their winning bids. During the more than three years since the grant of the FCC authorization for its Stations, DITV and/or its affiliated companies have invested substantial sums, in excess of an additional \$5 million, in the attempt to develop and provide IVDS services to the public. DITV's efforts included both specific investments in the markets where it held IVDS authorizations as well as the IVDS industry as a whole.

Specifically, DITV invested in the products and services of Welcome To The Future, Inc. ("WTTF"), a start-up company seeking to manufacture and distribute set-top transmitter units, IVDS base station technology, and IVDS programs and services in the United States. For more than two years, DITV and WTTF constructed facilities for DITV's IVDS station in the Columbus, Ohio MSA and ran tests of the WTTF technology and services in that MSA and at least one other MSA. These services included various commercial applications, including the provision of wireless Internet access. Among other actions, DITV installed set-top units in the Columbus, Ohio MSA on a trial basis, attempting to test and improve the IVDS services and programs offered by the WTTF equipment. DITV expended several million dollars in this effort and in investing funds in WTTF's product development. Despite DITV's efforts, however, as is the case in most every market throughout the United

States, at the present time the IVDS services like those provided by WTTF and other suppliers have not proved commercially feasible.

For these reasons, DITV applauds the Commission's efforts to provide additional service and spectrum flexibility to licensees in this Service. In addition, as discussed more fully below, DITV also supports the Commission's proposals to liberalize the operating rules in this Service, provided that the changes are not likely to cause additional interference to TV Channel 13 operations.

Service and Spectrum Flexibility. DITV enthusiastically supports the Commission's proposal to permit 218-219 MHz Service licensees to have the flexibility to offer services either as (i) common or private carriers as well as (ii) Commercial Mobile Radio Services ("CMRS") or Private Mobile Radio Services ("PMRS") providers. DITV agrees with the Commission that this flexibility, which is consistent with the Commission's recent actions authorizing several other services, is the best approach to ensuring that the spectrum allocation is put to its highest and best use.²

² See Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service ("WCS"), ("WCS Service Order") 12 FCC Rcd. 10785, 10798 (1997) ("a flexible use allocation serves the public interest. Permitting a broad range of services to be provided on this spectrum will permit the development and deployment of new telecommunications services and products to the consumers. Moreover, WCS licensees will not be constrained to a single use of this spectrum and therefore, may offer a mix of services and technologies."); Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, ("GWCS Service Order") 11 FCC Rcd. 624, 631 (1995) (authorizing General Wireless Communications Service licensees to provide any Fixed or Mobile service except Broadcast services, radiolocation services, and satellite services; "The flexibility of GWCS will permit licensees to adapt to [changing] circumstances without the need for

(continued...)

In particular, DITV believes that the Commission's decision to permit 218-219 MHz Service Licensees to interconnect with the Public Switched Network and/or to other CMRS providers, subject to compliance with the regulatory restrictions applicable to the services offered, will ensure that all licensees for the Service have the flexibility to respond to marketplace demands. As the Commission has recognized, its duty to manage the non-governmental radio frequency spectrum requires that it continually "seek to improve the efficiency of spectrum use, reduce the regulatory burden on spectrum users, encourage competition and provide services to the largest feasible number of users." NPRM ¶ 2 (emphasis added). Because the proposed flexibility clearly will permit 218-219 MHz Service licensees to respond to marketplace demands and technological developments, it will ensure the most efficient use of the spectrum and the provision of services to the largest feasible number of users.

Consistent with this flexibility, DITV similarly supports the Commission's proposal to permit both 218-219 MHz Service licenses in a given market to be owned by the same entity. While the Commission's original cross-ownership prohibition was justified over concerns about the possible exercise of market power in the market for interactive television services, services that were to be unique to this frequency band, DITV agrees with the Commission that limiting the competitive analysis to interactive television no longer makes sense. NPRM ¶ 49. Given the proposed new flexibility for this Service, its licensees will face

² (...continued)

Commission intervention, further contributing to their efficient use" and will "encourage research and investment to invent, develop, and market new technologies, and spur their deployment to serve customers.") .

competition from a variety of providers operating in other frequency bands -- competition that will serve as a reliable and certain deterrent to any concerns about the accumulation or exercise of market power.

Because the competition that 218-219 MHz Service licensees will face from other service providers eliminates any anticompetitive concerns, DITV submits that the Commission should eliminate the cross-ownership prohibition. This action will ensure that 218-219 MHz Service licensees have the technical flexibility to provide a variety of services in an efficient and reliable manner. The Commission has repeatedly recognized the importance of providing an adequate amount of spectrum in its orders authorizing other new services.³ Coupled with the proposal to permit partitioning and disaggregation of the 218-219 MHz licenses, a proposal that DITV also supports, permitting both Service licenses to be commonly owned will ensure that the use of the 218-219 MHz band will be dictated by the marketplace rather than by any artificial regulatory construct. As the Commission recognized in authorizing the General Wireless Communications Service, "[t]he most valuable uses of this spectrum also may differ in urban and rural parts of the Nation, or in regions with different industries, and may change over time" -- observations that apply with equal force to the 218-219 MHz Service.⁴

³ See WCS Service Order, 12 FCC Rcd. at 10800-01 ("we have taken several steps that we hope will assist licensees in achieving economies of scale. For example, we have established relatively large geographic service areas and spectrum block sizes.").

⁴ GWCS Service Order, 11 FCC Rcd. at 631.

Operating Flexibility. As a licensee in the 218-219 MHz Service as well as a licensee of a TV Channel 13 operation in the same market, DITV and its parent Dispatch have a unique perspective on the Commission's proposals to liberalize the operating rules applicable to the Service. See supra note 1. DITV generally supports the liberalization of several of the Commission's operating rules but urges caution to ensure that no additional interference is caused to adjacent TV Channel 13 operations.

DITV supports the Commission's proposal to increase the 100 milliwatt ERP restriction on mobile RTUs, provided that care is taken to ensure the new power level will not cause interference to TV Channel 13 operations. Based on its experience in trying to develop a business in this Service, DITV has long recognized that the 100 milliwatt limit represents a difficult, if not impossible, obstacle to the provision of any type of viable service. Because these mobile RTUs will not remain in a single location and will not operate for continuous periods of time, DITV believes that the ERP limit can safely be raised for this equipment without presenting an increased threat of interference to TV Channel 13 operations. For the same reasons, DITV also supports the proposal to liberalize the duty cycle limit currently contained in the rules, especially the limits imposed on mobile RTUs. The current duty cycle limit on mobile RTUs also represents a significant obstacle to the practical use of the spectrum.

While generally supportive of an increase in the ERP and duty cycle limits on fixed RTUs as well as CTSs, DITV is considerably more concerned about the possibility of

interference to TV Channel 13 operations from these fixed facilities and therefore urges the Commission to evaluate any proposed increases carefully. Similarly, while DITV believes the Commission should consider liberalizing the CTS antenna height and transmitter power ratios, the Commission should do so only if the proposed changes will not lead to interference to TV Channel 13 operations. Again, while additional flexibility may be warranted under the rules, the Commission should not act without some assurance that the changes will not cause an increase in interference.

DITV opposes the proposal to eliminate the automatic power control ("APC") requirement for RTUs with ERPs in excess of 100 milliwatts. Given the proximity of the 218-219 MHz Spectrum to TV Channel 13 operations, DITV submits that automatic power controls, which ensure that the minimum level of power is used to facilitate a given communication between an RTU and a CTS, represent a sensible regulatory requirement. DITV submits that APCs represent only a minimal intrusion on system design while insuring that the services are provided efficiently without causing unnecessary interference.

Finally, DITV opposes any suggestion that the Commission rely exclusively on the overall interference provision contained in section 95.861 of its rules to provide interference protection to TV Channel 13 operations. See 47 C.F.R. § 95.681. Although section 95.681's requirement that a 218-219 MHz Service licensee must correct demonstrated interference to TV Channel 13 reception or discontinue operations is appropriate, DITV submits that it cannot serve as a substitute for sound engineering design. In practice, section

95.681 is difficult to enforce because most television viewers are unaware of the adjacent channel operations and do not know that any incremental interference can be eliminated under the rules. Accordingly, DITV submits that the Commission should continue a regulatory regime that does not increase the level of predicted interference to TV Channel 13 operations on the theory that any actual interference will necessarily be resolved following viewer complaints.

Conclusion. DITV applauds the Commission for its proposals to allow 218-219 MHz Service licenses to respond to technical and marketplace changes. As a licensee long committed to developing a viable service in this band, DITV submits that these proposed changes will serve the public interest by ensuring that the spectrum is used efficiently and that Service is provided to the largest feasible number of users.

Respectfully submitted,

DISPATCH INTERACTIVE TELEVISION, INC.

A handwritten signature in cursive script, reading "Mark D. Schneider".

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